

SENATE BILL 214

E1

(2lr1540)

ENROLLED BILL

— *Judicial Proceedings/Judiciary* —

Introduced by **Senator Raskin**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – De ~~Minimus~~ *Minimis* Quantity**

3 FOR the purpose of establishing a reduced penalty for a person convicted of the use or
4 possession of less than a certain quantity of marijuana; providing that, with a
5 certain exception, the use or possession of less than a certain quantity of
6 marijuana may not be considered a lesser included crime of any other crime;
7 providing that a certain sentence imposed under this Act shall be stayed under
8 certain circumstances without requiring an appeal bond; and generally relating
9 to penalties for possession of marijuana.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Law
12 Section 5–601
13 Annotated Code of Maryland
14 (2002 Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Criminal Law**

4 5–601.

5 (a) Except as otherwise provided in this title, a person may not:

6 (1) possess or administer to another a controlled dangerous substance,
7 unless obtained directly or by prescription or order from an authorized provider acting
8 in the course of professional practice; or

9 (2) obtain or attempt to obtain a controlled dangerous substance, or
10 procure or attempt to procure the administration of a controlled dangerous substance
11 by:

12 (i) fraud, deceit, misrepresentation, or subterfuge;

13 (ii) the counterfeiting or alteration of a prescription or a written
14 order;

15 (iii) the concealment of a material fact;

16 (iv) the use of a false name or address;

17 (v) falsely assuming the title of or representing to be a
18 manufacturer, distributor, or authorized provider; or

19 (vi) making, issuing, or presenting a false or counterfeit
20 prescription or written order.

21 (b) Information that is communicated to a physician in an effort to obtain a
22 controlled dangerous substance in violation of this section is not a privileged
23 communication.

24 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
25 person who violates this section is guilty of a misdemeanor and on conviction is subject
26 to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

27 (2) (I) A person whose violation of this section involves the use or
28 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not
29 exceeding \$1,000 or both.

1 (ii) 1. A PERSON CONVICTED OF THE USE OR
2 POSSESSION OF LESS THAN ~~14~~ 10 GRAMS OF MARIJUANA IS SUBJECT TO
3 IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 OR
4 BOTH.

5 2. UNLESS SPECIFICALLY CHARGED BY THE STATE,
6 THE USE OR POSSESSION OF LESS THAN ~~14~~ 10 GRAMS OF MARIJUANA UNDER
7 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A
8 LESSER INCLUDED CRIME OF ANY OTHER CRIME.

9 3. IF A PERSON IS CONVICTED UNDER THIS
10 SUBPARAGRAPH, THE COURT SHALL STAY ANY SENTENCE IMPOSED THAT
11 INCLUDES AN UNSERVED, NONSUSPENDED PERIOD OF IMPRISONMENT WITHOUT
12 REQUIRING AN APPEAL BOND:

13 A. UNTIL THE TIME FOR FILING AN APPEAL HAS
14 EXPIRED; AND

15 B. IF AN APPEAL IS FILED, DURING THE PENDENCY
16 OF THE APPEAL.

17 (3) (i) 1. In this paragraph the following words have the
18 meanings indicated.

19 2. “Bona fide physician–patient relationship” means a
20 relationship in which the physician has ongoing responsibility for the assessment,
21 care, and treatment of a patient’s medical condition.

22 3. “Debilitating medical condition” means a chronic or
23 debilitating disease or medical condition or the treatment of a chronic or debilitating
24 disease or medical condition that produces one or more of the following, as documented
25 by a physician with whom the patient has a bona fide physician–patient relationship:

26 A. cachexia or wasting syndrome;

27 B. severe or chronic pain;

28 C. severe nausea;

29 D. seizures;

30 E. severe and persistent muscle spasms; or

31 F. any other condition that is severe and resistant to
32 conventional medicine.

1 (ii) 1. In a prosecution for the use or possession of
2 marijuana, the defendant may introduce and the court shall consider as a mitigating
3 factor any evidence of medical necessity.

4 2. Notwithstanding paragraph (2) of this subsection, if
5 the court finds that the person used or possessed marijuana because of medical
6 necessity, on conviction of a violation of this section, the maximum penalty that the
7 court may impose on the person is a fine not exceeding \$100.

8 (iii) 1. In a prosecution for the use or possession of
9 marijuana under this section, it is an affirmative defense that the defendant used or
10 possessed marijuana because:

11 A. the defendant has a debilitating medical condition
12 that has been diagnosed by a physician with whom the defendant has a bona fide
13 physician–patient relationship;

14 B. the debilitating medical condition is severe and
15 resistant to conventional medicine; and

16 C. marijuana is likely to provide the defendant with
17 therapeutic or palliative relief from the debilitating medical condition.

18 2. The affirmative defense may not be used if the
19 defendant was:

20 A. using marijuana in a public place; or

21 B. in possession of more than 1 ounce of marijuana.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2012.